

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

DAVENPORT UNIVERSITY

Employer

and

Case 7-RC-22328

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO**

Petitioner

APPEARANCES:

Donald P. Lawless, Attorney, of Grand Rapids, Michigan, for the Employer
Patricia Manzo, of Flint, Michigan, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:^{1/}

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employers are engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

^{1/} The Employer filed a brief that was carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer is a private, non-profit institution of higher learning that offers open enrollment to students at 24 campuses, including the one at issue in Lansing, Michigan. The parties agree upon the appropriateness as a unit of full-time and regular part-time Lansing campus faculty employees, excluding adjunct faculty, office clerical employees, staff janitors, and various other traditionally excluded personnel.² The question for decision is whether full-time faculty serving as department chairs and program coordinators are excludable as statutory supervisors, as urged by the Employer. I am persuaded that the Employer has met its evidentiary burden that department chairs are supervisors within the meaning of the Act. However, the Employer has not satisfied its burden with respect to program coordinators.

The Lansing campus is headed by Executive Director Tom Woods and Academic Dean Dianne Rey, who work with the Employer's centralized human resource branch in Grand Rapids and under the system's Senior Vice President Janet Guggenheim in Warren. At Lansing, Woods and Rey oversee 850 students, 6 full-time department chairs, 2 full-time faculty members, about 60 part-time adjunct instructors, and an undisclosed number of ancillary staff. Two of the six department chairs bear the additional title of program coordinator.

Each academic quarter, the Lansing campus offers from 80 to 102 classes, taught by the full-time staff and about 30 or 40 adjunct instructors. The normal teaching load for full-time faculty is four classes per quarter. In exchange for performing the various administrative and oversight tasks of department chair, program coordinator, or both, a faculty member is released from teaching one or two classes.

Department Chairs

How to characterize the department chairs' relationship to full-time faculty and adjunct instructors is the pivotal question. The Employer contends that department chairs effectively recommend their hiring, firing, and discipline; make their work assignments; effectively recommend their reward or retention by means of evaluations; and resolve their disputes. The Petitioner maintains that the interactions are collegial rather than

² The parties' full stipulation is set forth below.

supervisory. I make the following factual findings based upon the weight of the evidence.³

Hiring. Department chairs are directly involved in the selection of instructional staff for their respective departments. If the candidate is unknown, the department chair will contact references and conduct an interview to assess the candidate's mastery of the subject. If the department chair is suggesting consideration of someone whose work is familiar, the technical interview may be waived. At some point - either together with the department chair or separately - Academic Dean Rey also interviews applicants for insight into their expectations, aspirations, and suitability. The department chair and the dean then discuss the applicant and arrive at a mutual decision. Mutuality is sometimes achieved by Rey's subordinating her contrary view in deference to that of the department chair. In fact, there is no evidence that the dean ever thwarts the department chairs' hiring recommendations.

Successful candidates are formally recommended by the dean to the Employer's human resource branch. This is a ministerial act that causes the new employee to be added to the payroll system and a written job offer to be drafted by human resources. The foregoing process applies to the hiring of both full-time and adjunct faculty. The department chair normally conveys the job offers and acquaints new faculty with university grading policies, standard course materials, and campus buildings.

Evaluations. Department chairs observe new departmental faculty at work about five weeks into their first quarter and prepare written "in-class" evaluations of them. Department chairs' subsequent evaluations occur annually for full-time faculty and biannually for adjunct instructors. Every evaluation is the subject of a conference between the department chair and the faculty member. The standard appraisal forms completed by department chairs elicit ratings and narratives regarding employees' teaching and communication skills, substantive knowledge, demeanor, and punctuality.⁴ The evaluations do not explicitly call for personnel recommendations of any sort. However, a negative or marginal evaluation will prompt a meeting between the department chair and the dean to discuss the fate of the faculty member. Possible outcomes include reassigning the class, designating a mentor, demoting to tutor status, or not renewing employment at the next quarter. Evaluations were also described as a "guide" in salary adjustments, but no details were adduced concerning the correlation.

Discipline. Although the university has no formal disciplinary system for faculty, department chairs regularly document problems in instructors' performance and report them to Academic Dean Rey. Department chairs learn of problems either by

³ I must decline the Employer's invitation to make credibility resolutions. Pre-election representation hearings are investigatory in nature and credibility rulings are not made. *Marian Manor for the Aged and Infirmary*, 333 NLRB No. 133 (Apr. 24, 2001).

⁴ Evaluation forms for full-time faculty are more comprehensive than those for adjuncts.

personally observing instructors in class or by receiving student complaints. Students are encouraged to resolve differences by appealing first to the instructor in question, then to the department chair, and finally to the academic dean, but some bypass the initial steps and complain directly to Academic Dean Rey. When this occurs, Rey alerts the department chair.

Regardless of who initiates discussion once a problem has been identified, Rey and the relevant department chair confer and jointly decide upon a course of action. For example, Rey and a department chair once concurred in demoting an adjunct instructor to tutor in the campus's Academic Enrichment Center. Later, the department chair recommended that the teacher's adjunct status be restored. Rey believed that the restoration was premature, but nevertheless implemented the department chair's recommendation.

There is no evidence that faculty are subject to disciplinary suspensions. However, department chairs remind errant instructors of university policies. When an adjunct's performance is viewed as too substandard, he will simply not be invited to teach during the next quarter. The decision not to retain an adjunct instructor is made jointly by the department chair and Academic Dean Rey. In all but what Rey described as "extreme" cases, she defers to the department chair's retention recommendation. The percentage and details of cases deemed "extreme" were not explored.⁵

Assignments and Scheduling. Department chairs submit quarterly class assignments for Academic Dean Rey's approval. Chairs typically assign themselves, and any full-time faculty in their departments, their preferred classes. Adjuncts receive the remaining classes. One department chair makes assignments by soliciting requests in order of the adjuncts' seniority. No other specific assignment methods were revealed. Rey usually approves the recommended assignments.

Lansing campus policy encourages teachers who must miss a class to obtain their own replacements. If a replacement is not available, the faculty member may schedule a make-up class or increase the class time of the remaining scheduled classes. These options normally require the permission of either the department chair or Academic Dean Rey.

Vacation requests of full-time faculty are submitted in writing to the department chair and Rey. The record contains several examples of such requests, showing approval by the department chair on the "supervisor" signature line, as well as approval by an assistant dean. No testimony was taken regarding the scope of the department chair's discretion in granting or withholding approval. The form states that the "supervisor" must explicitly approve any request that exceeds the employee's current vacation

⁵ The record is not clear on how, if at all, the procedure for severing full-time faculty may differ from that for adjuncts.

balance. Whether a department chair constitutes a “supervisor” for this purpose was not revealed.

Wages and Benefits. Department chairs have little if any input into faculty wages and benefits. The financial terms of all job offers are determined by the Employer’s human resource division. Fringe benefits are also centrally formulated. The Lansing campus receives allotments that it may devote to salary increases. Executive Director Woods makes those decisions upon recommendations by Academic Dean Rey. Rey testified that she looks to evaluations prepared by department chairs as a “guide,” but, as noted above, there is no specific evidence as to how evaluations influence her calculus.

Secondary Indicia. The annual salaries of department chairs, for which they work 40 hours per week throughout most of the year and part-time in July and August, range from \$36,000 to \$48,000. The salaries of the two current full-time faculty, who work 32 hours weekly and have summers free, are about \$34,000 per annum. Adjunct instructors are paid a set amount per class taught. Department chairs and other full-time staff receive the same insurance benefits. Tuition reimbursement or rebates are available to all full-time faculty, although the perquisite seems to be more automatic for department chairs.

All full-time faculty, including department chairs, are expected to have a master’s degree in their field of study. The same is not necessarily required of adjuncts.

Department chairs hold year-end meetings for their teaching staffs to review instructional materials, software, and problems. Chairs are responsible for ordering educational materials used by their instructors.

The job description of department chairs imputes to them the authority to “recruit, hire, schedule, supervise, mentor and evaluate” adjunct faculty. Witnesses estimated variously that department chairs devote 10% to 40% of their time to administrative and leadership functions. The job description of one particular full-time instructor notes that the incumbent “reports to” the department chair.

Program Coordinators

The Lansing campus has three coordinator positions, only two of which are presently filled. Wendy Hedeem is the Physical Therapy Assistant Program Coordinator as well as the Allied Health Department Chair. Barbara Stockton is both the Academic Enrichment Center Program Coordinator and the Developmental Education Department Chair. Former employee Bea Salada, who was the only program coordinator without a department chair position, was the Medical Assistant – Health Care Program

Coordinator. Her duties have now been assumed by Wendy Hedeem. There was no indication in the record as to when, if ever, Salada's coordinator position will be filled.

The Academic Enrichment Center, staffed by adjunct instructors and students in the university's work-study program, offers students a computer lab and supplemental tutoring in accounting, mathematics, and writing. No parallel evidence was presented with respect to the Physical Therapy and Medical Assistant programs or the specialized duties of their respective coordinators.

Although lower than department chairs in the Employer's organizational ladder, coordinators were described as similar to department chairs in the scope of their authority. There was conclusionary testimony that coordinators evaluate adjuncts in their field, assign them classes to teach, and resolve student – adjunct disputes in the same manner that department chairs do. No specifics were adduced. Academic Dean Rey testified that coordinators "participate" in hiring adjuncts, but was silent on the extent and nature of their participation, other than to state that Academic Enrichment Center Coordinator Barbara Stockton makes the sole decisions on the hiring of tutors and work-study students. Stockton herself testified, to the contrary, that staff for the Academic Enrichment Center is hired not by her, but by the academic dean or the financial aid office. It was said that Stockton sets the hours and signs the time sheets of the faculty and students who work in the Academic Enrichment Center. However, the degree of discretion that she exercises in completing these tasks is unknown.

Like department chairs, coordinators help unify their curricula by selecting standard instructional materials. Unlike chairs, coordinators are responsible for developing processes to gain state accreditation for their programs.

Analysis

The primary supervisory indicia enumerated in Section 2(11) of the Act are read in the disjunctive, so that possession of any one of the 12 listed authorities can invest an individual with supervisory status. The burden of proof rests with the party seeking to exclude the individual as a supervisor. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Benchmark Mechanical Contractors*, 327 NLRB 829 (1999). The Board is mindful not to deprive employees of their rights under Section 7 by interpreting the term supervisor too broadly. *Unifirst Corp.*, 335 NLRB No. 58, slip op. at 8 (Aug. 27, 2001).

I find that department chairs are statutory supervisors by virtue of their authority to make effective recommendations regarding hiring of faculty. Virtually all instructors have been interviewed and recommended favorably by their respective department chair. Indeed, there is no evidence that the chairs' recommendations are overturned even when the academic dean holds a dissenting view. Department chairs' decisive input into hiring

applies to both adjuncts, who are outside the Petitioner's proposed unit, and full-time faculty, who are within the unit. This constitutes effective recommendatory authority sufficient to vest department chairs with supervisory status. ***Detroit College of Business***, 296 NLRB 318 (1989); compare ***Kendall School of Design***, 279 NLRB 281, 293 (1986) (hiring recommendations adopted only occasionally). The department chairs' hiring authority may be but one element of their duties, but it is not merely an ancillary function. Rather, it goes to the heart of their mission to uphold the academic integrity of the institution. This militates in favor of supervisory status. See ***Legal Aid Society of Alameda County***, 324 NLRB 796, 797 (1997). At any rate, the Board has rejected a simplistic analysis based merely upon the percentage of time that an individual exercises supervisory power. ***Union Square Theatre Management***, 326 NLRB 70 (1998); ***Detroit College of Business***, supra at 321.

I further find that department chairs are supervisors based upon their authority to affect faculty's retention. The chairs' contributions in this regard do not necessarily devolve from the evaluations per se, which are more reportorial than recommendatory. See ***Training School of Vineland***, 332 NLRB No. 152, slip op. at 1 (Dec. 15, 2000). Rather, statutory supervisory authority is evidenced by the chairs' power, through discussion, effectively to influence the academic dean's decision on whether an instructor will be retained, demoted, or not invited to return.

The foregoing conclusions render all department chairs ineligible, including the two who are also coordinators.⁶ The eligibility of any future non-chair program coordinators is more problematic. I am not convinced that the probative evidence establishes that such coordinators are supervisors within the meaning of the Act. The testimony regarding their role in hiring was not only conclusionary but disputed. ***Sears, Roebuck & Co.***, 304 NLRB 193 (1991) (conclusionary statements without supporting evidence do not establish supervisory authority). That they complete evaluations does not impart supervisory status without evidence, missing here, that the evaluations constitute effective personnel recommendations. ***Brown & Root***, 314 NLRB 19, 21 (1994). Both department chairs and coordinators make initial class assignments, but, as far as the record reveals, do little more than convey their own and other instructors' preferences to the dean. This does not rise to the level of supervisory authority because there is an insufficient showing that the task as performed involves the exercise of independent judgment. ***Bethany Medical Center***, 328 NLRB 1094, 1103 (1999).

I therefore conclude that no unit employee is ineligible as a supervisor on the sole ground that he holds the position of program coordinator.

⁶ Hedeem and Stockton perform dual functions, but their department chair responsibilities evidently predominate and engage them on a full-time basis. Consequently, they are ineligible as supervisors.

5. Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time faculty employees employed by the Employer at its Lansing campus at 220 East Kalamazoo Street, Lansing, Michigan; but excluding all adjunct faculty, office clerical employees, staff janitors, confidential employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

Those eligible to vote shall vote as to whether or not they wish to be represented for collective bargaining purposes by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), AFL-CIO.

Dated at Detroit, Michigan, this 15th day of November 2002.

(SEAL)

/s/ Stephen M. Glasser
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Classification

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